

HOUSE BILL NO. 522

INTRODUCED BY M. REINHART

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EXEMPTIONS FROM CERTAIN SUBDIVISION REVIEW REQUIREMENTS; REVISING THE KINDS OF DIVISIONS OF LAND THAT ARE NOT SUBJECT TO REVIEW; IDENTIFYING THE CREATION OF A SECURITY INTEREST IN LAND; CLARIFYING THE DIVISIONS THAT ARE SUBJECT TO CERTAIN SURVEY REQUIREMENTS AND ZONING REGULATIONS; ALLOWING A GOVERNING BODY TO EXAMINE DIVISIONS OF LAND TO VERIFY THAT AN EXEMPTION APPLIES; AMENDING SECTIONS 76-3-201, 76-3-207, 76-3-504, AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Exemption for divisions of land creating security interest -- subject to survey requirements and zoning regulations. (1) (a) Unless the method of disposition is adopted for the purpose of evading this chapter, review under parts 5 and 6 of this chapter is not required for a division of land that, subject to subsections (2) and (3), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing.

(b) A division of land as provided in this section is subject to the surveying requirements in 76-3-401 and to applicable zoning regulations adopted under Title 76, chapter 2. A LOCAL GOVERNING BODY MAY DETERMINE THAT A MORTGAGE TRACT OR REMAINING PARCEL CREATED UPON FORECLOSURE IS A LEGAL NONCONFORMING PARCEL IN APPLICABLE ZONING REGULATIONS ADOPTED UNDER TITLE 76, CHAPTER 2.

(2) The provisions of subsection (1) apply:

(a) to a division of any size;

(b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (2)(b) subjects the division of land to the requirements of parts 5 and 6 of this chapter.

(c) if the subdivider provides a letter from a lending institution governed by Title 32, chapters 1 through

3 and 9, certifying that the parcel that is being created is for the purpose of providing security as provided in subsection (1)(a); and

(d) if the division complies with other local regulations adopted under this title.

(3) The governing body may examine a division of land to determine whether or not the requirements of parts 5 and 6 of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination.

Section 2. Section 76-3-201, MCA, is amended to read:

"76-3-201. Exemption for certain divisions of land -- fees for examination of division. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

~~(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;~~

~~(b) subject to subsection (3), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;~~

~~(c)(a) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;~~

~~(d) creates cemetery lots;~~

~~(e)(b) is created by the reservation of a life estate;~~

~~(f)(c) is created by lease or rental for farming and agricultural purposes; or~~

~~(g)(d) is in a location over which the state does not have jurisdiction; or~~

~~(h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.~~

~~(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.~~

~~———— (3) An exemption under subsection (1)(b) applies:~~

~~———— (a) to a division of land of any size;~~

~~———— (b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien,~~

1 or trust indenture. A transfer of the divided land, by the owner of the property at the time that the land was divided,
2 to any party other than those identified in this subsection (3)(b) subjects the division of land to the requirements
3 of this chapter.

4 ~~—— (c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the~~
5 ~~tract of land is subject to the provisions of this chapter if applicable.~~

6 (4)(2) The governing body may examine a division of land to determine whether or not the requirements
7 of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination."
8

9 **Section 3.** Section 76-3-207, MCA, is amended to read:

10 **"76-3-207. Divisions of land exempted from review but subject to survey requirements and zoning**
11 **regulations -- conditions on divisions ordered by court -- exceptions -- fees for examination of division.**

12 (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading
13 this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying
14 requirements of 76-3-401 for divisions of land not amounting to subdivisions and are subject to applicable zoning
15 regulations adopted under Title 76, chapter 2:

16 (a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines
17 between adjoining properties;

18 (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county
19 to each member of the landowner's immediate family;

20 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the
21 parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the
22 governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

23 (d) for five or fewer lots within a platted subdivision, relocation of common boundaries and the
24 aggregation of lots; ~~and~~

25 (e) divisions made for the purpose of relocating a common boundary line between a single lot within a
26 platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original
27 platted lot or original unplatted parcel continues to apply to those areas.

28 (f) divisions created by order of any court of record in this state or by operation of law or that, in the
29 absence of agreement between the parties to the sale, could be created by an order of any court in this state
30 pursuant to the law of eminent domain as provided in Title 70, chapter 30. Before a court of record orders a

division of land under this subsection, the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(g) divisions that create cemetery lots; or

(h) divisions that create rights-of-way or utility sites. A subsequent change in the use of the land to residential, commercial, or industrial use under this subsection (1)(h) is subject to the requirements of this chapter.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, a division of lots that results in an increase in the number of lots or that redesigns or rearranges six or more lots must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder;

(b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be divided have been paid.

(b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before the division of land is made.

(ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as a partial payment of the total tax that is due.

(4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination."

Section 4. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);

(b) except as provided in 76-3-210, 76-3-509, or 76-3-609, require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;

(d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.

(f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

(g) prescribe standards for:

(i) the design and arrangement of lots, streets, and roads;

(ii) grading and drainage;

(iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:

(A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and

(B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and

(iv) the location and installation of public utilities;

(h) provide procedures for the administration of the park and open-space requirements of this chapter;

(i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.

(j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:

(i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;

(ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

(iii) reserve and sever all surface water rights from the land;

(k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:

(A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall

document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in [section 1], 76-3-201, or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

Section 5. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations. (1) Minor subdivisions must be reviewed as provided in this section and subject to the applicable local regulations adopted pursuant to 76-3-504.

(2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision under this chapter or has not resulted from a tract of record that has had more than five parcels created from that tract of record under [section 1], 76-3-201, or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed as follows:

(a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1) through (3).

(b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the review period, not to exceed 1 year.

(c) Except as provided in subsection (2)(d)(iii), an application must include a summary of the probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

(d) The following requirements do not apply to the first minor subdivision from a tract of record as provided in subsection (2):

(i) the requirement to prepare an environmental assessment;

(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and

(iii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address the criteria in 76-3-608(3)(a).

(e) The governing body may adopt regulations that establish requirements for the expedited review of the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under the regulations:

(i) 76-3-608(3); and

(ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

(3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and 76-3-620.

(4) The governing body may adopt subdivision regulations that establish requirements for review of subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as provided in subsection (2) and this chapter.

(5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).

(b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations."

NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 76, chapter 3, part 2, and the provisions of Title 76, chapter 3, part 2, apply to [section 1].

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

- END -